

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No. 617/2005

Judgment delivered on: 25.11.2010

Pradeep Kumar Appellant
Through: Mr. Aseem Mehrotra, Adv.

Versus

M/s. Singh Copper & Brass Place Respondent
Through: Mr. Rajinder Mathur, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:
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1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908 the appellant seeks to set aside the judgment and decree dated 11.4.2005 passed the court of the

learned ADJ, Delhi whereby the suit for recovery filed by the plaintiff was dismissed as being not maintainable.

2. Brief facts of the case relevant for deciding the present appeal are that the appellant started supplying brass, copper, iron and white metal handicraft goods to the respondent since 1992-93. As per the case of the appellant, he maintained a running account in the name of respondent and the respondent used to make part payment from time to time. That the last delivery of goods by the appellant was made on 8.6.1994 and the last part payment of Rs.1,50,000 was made by the respondent on 5.4.95 and thereafter an amount of Rs.2,41,649.05 was outstanding against the respondent. A legal notice dated 8.7.1997 was served on the respondent, but they failed to make the payment and hence the appellant filed a suit for recovery on 30.7.1997 which was dismissed by the learned trial court on the ground that the suit was barred by limitation and was not maintainable. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Mr. Aseem Mehrotra, counsel for the appellant states that the learned Trial Court did not care to take note of the fact that the respondent plaintiff had admitted in the written statement that it had paid an amount of Rs. 1,50,000/- on 5th April, 1995. The contention of counsel is that the limitation of three years would start from the date of the said payment lastly made by the respondent to the appellant. Counsel further submits that the respondent has been issuing Form H under the Central Sales Tax Act for the goods supplied by the appellant to the respondent, which were meant for export, and the said forms were issued on 25th August, 1995 and were duly proved on record by the appellant as Ex.PW 1/61, 62 and 63. Counsel also submits that ledgers of the account of the respondent were placed on record and were proved as Mark A to D and the said ledger duly reflects the last payment of Rs.1,50,000/- made by the respondent on 5.4.1995. Counsel further submits that the dishonesty of the respondent is duly reflected from the perusal of copy of the letter dated 17.1.1994 and the certificate dated 27.9.96 placed on record by the respondent

as in the said letter although the respondent has taken a stand that the appellant had not supplied the items as per the samples because of the discrepancy in the height of the items, but these very items for which complaints were raised by the respondent were duly exported and in respect of the same Form H was issued by the respondent on 25.8.95. Counsel further submits that the certificate dated 27.9.1996, which was placed on record by the respondent, but was not proved by it, give strength to the fact that the said certificate was forged by the respondent. Drawing a distinction between the two letter heads of the appellant, counsel submits that in the said certificate dated 27.09.1996 under the name of the appellant "Manufacturers & Sussliers" is mentioned and on the other letter head, under which the invoice bills were raised by the appellant, the words "Manufacturers & Specialists in" were stated under the name of the appellant company and also in place of 'Artware' the word 'Vrtware' was mentioned in the said certificate dated 27.9.96.

4. Counsel further states that the trial court framed Issue No. 4 as '*whether the plaintiff has given a letter dated 27.9.1996 to the defendants*' but failed to decide the said issue. Counsel thus submits that once the trial court had framed the issue at the instance of the respondent, then it was incumbent on the part of the learned court to have at least decided the issue.

5. Counsel for the respondent on the other hand, supports the judgment passed by the learned trial court and submits that no perversity or illegality can be found in the same.

6. I have heard learned counsel for the parties at considerable length and gone through the records.

7. The appellant filed a suit for recovery of Rs.3,70,000/- against the respondent. The case set up by the appellant in the plaint was that the appellant was approached by the respondent in the year 1992-93 for the supply of certain brass items and as per the appellant the same were duly supplied to the respondent for a total sum of Rs.33,862.50/-. In para 3 of the plaint, the appellant has

averred that the appellant was maintaining a running account in the name of the respondent and in the said account the balance amount payable by the respondent was duly reflected. It was further averred that the last supply of goods made by the appellant to the respondent was vide bill no. 154 dated 8.6.94 for Rs.36,050/-. It is further stated that the respondent on their part had paid Rs. 1,50,000/- on 5.4.95 against the outstanding balance and after giving adjustment of the said amount, the balance amount of Rs.2,41,649/- was left to be paid by the respondent as on 31.3.96. The appellant has further averred that after making the said last payment on 5.4.95, the respondent did not care to pay the outstanding balance amount despite repeated demands raised by the appellant. In para 11 of the plaint which relates to cause of action, it has been averred that cause of action arose on each and every date when the payments became due and the respondent failed to clear the outstanding amount despite repeated demands raised by the appellant and cause of action lastly arose on 5.4.1995 when the last payment was made by the respondent.

8. Based on the aforesaid pleadings of the parties, the learned trial court framed the following issues.

“1. Whether the suit is not maintainable as the same has not been filed by and through proper person as mentioned in para no. 2&3 of WS? OPD.

2. Whether the plaintiff has supplied the goods as mentioned in the plaint? OPP.

3. Whether the plaintiff has not supplied the complete goods as per specification as claimed in WS? If so, its effect? OPD

4. Whether the plaintiff has given a letter dated 27.9.1996 to the defendants? If so, its effect? OPD

5. To what amount is the plaintiff entitled? OPP

6. Whether the plaintiff is entitled to interest? If so, at what rate, for what period? OPP

9. The appellant had examined two witnesses and has proved on record photo copies of the bills as Ex. PW1/1 to PW1/33, and copies of Form S.T. 38 as Ex.PW1/34 to PW1/57. Copies of the bills of lading were proved on record as Ex.PW1/64 to PW1/69 and PW-1/71. Also proved were Form H as Ex.PW-1/58, Ex.PW 1/61 to PW 1/63. The appellant had produced PW2 Shri Gauri Shanker who was working as

Munim with the appellant. On the other hand, the respondent has produced the evidence of its sole proprietor DW 1, Jaswant Singh and also proved on record copy of the letter dated 17.1.1994 as Ex. DW1/A.

10. The learned trial court decided the issues nos. 5,6 and 7 collectively. It is correct that the Issue No. 4 was not decided by the learned trial court for which the onus was placed on the respondent. The said certificate dated 27.9.1996 which was otherwise proved on record as Ex. DW1/B, was strongly disputed by the appellant before the trial court as well as before this Court. Undoubtedly, the learned trial court should have given a separate finding on the said issue.

11. Be that as it may, the suit filed by the appellant has been dismissed only on the ground that the same was barred by limitation. It has not been disputed by the appellant that the statement of account was not proved on record by the appellant, although photo copies of the bills right from the first transaction with the respondent were being maintained by the appellant in his ledger which were

placed on record. Once the appellant had placed on record photo copies of the ledger, nothing could have prevented the appellant to produce the original records to prove the said statement of account. As per own case of the appellant, the appellant was maintaining the running account of the respondent and as per the said running account a sum of Rs.2,41,649/- was left outstanding against the respondent. Simply the fact that the respondent had lastly made the payment of Rs.1,50,000/- would not help the appellant to claim the alleged outstanding amount. The benefit of the last payment could have accrued to the appellant had the appellant successfully proved the said statement of account to show that there was a running account being maintained by the appellant and after an adjustment of said amount of Rs. 1,50,000/-, the said amount of Rs. 2,41,649/- was still left to be paid by the respondent. Having failed to prove the same, there was no material before the court based on which the court could have led to believe that the said amount of Rs. 2,41,649/- was still outstanding against the respondent.

12. Coming to the issue of the suit being not maintainable, the learned trial court held that the suit was barred by limitation. Admittedly, the last delivery by the appellant was made on 8.6.94 and the last payment was made on 5.4.95. Legal notice by the appellant was served upon the respondent on 8.7.1997 and the suit was filed by the appellant on 30.7.97. The learned trial court has applied Article 52 of the Limitation Act, 1908 which is synonymous with Article 14 of the Limitation Act, 1963 and reads as under:

PART II-SUITS RELATING TO CONTRACTS

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
14. For the price of goods sold and delivered where no fixed period or credit is agreed upon	Three years	The date of the delivery of the goods.

13. It is the case of the appellant that limitation should be counted from the date of the last payment i.e 5.4.1995,

which is a matter of record. But the appellant has nowhere proved the fact of the said payment of Rs. 1,50,000 and in what manner it was made. The appellant has relied upon bills, Form H and bills of lading for establishing his case, but has not proved the said documents in accordance with law. Even otherwise, the appellant has relied upon the admission of the respondent that the payment of Rs.1,50,000 on 5.4.95 is a matter of record. It is a settled legal position that the case of the plaintiff has to stand on its own legs and not on the weaknesses of the case of the defendant. Hence, the trial court has rightly held that the period of limitation has to be counted from the date of the last delivery, i.e 8.6.94, and as per the mandate of Article 14, the suit filed does not come within the stipulated period of three years.

14. With regards to the contention of the counsel for the appellant that the certificate dated 27.9.1996 was a forged document and that issue regarding it was not decided by the learned trial court, it would be suffice to say that even if the said document was proved to be fabricated, then also it

would not have helped the case of the appellant as the said certificate only states that no amount is due towards the appellant, but does not talk about the payments made by the respondent.

15. Hence, in the light of the above discussion, this court does not find any merit in the present appeal and the same is hereby dismissed.

November 25, 2010
rkr/mg

KAILASH GAMBHIR, J